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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,988	12/02/2003	Ilya Feygin	153-034US	4966

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DEMONT & BREYER, LLC
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EXAMINER

BOWERS, NATHAN ANDREW

ART UNIT	PAPER NUMBER
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1744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/725,988	FEYGIN, ILYA	
	Examiner	Art Unit	
	Nathan A. Bowers	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11, 16-20 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "wobble" in claims 11, 16-20 and 22 is a relative term which renders the claim indefinite. The term "wobble" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Since a "wobbling" motion could be used to describe a variety of separate and distinct motions, it is impossible to fully ascertain the scope of claims 11, 16-20 and 22.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

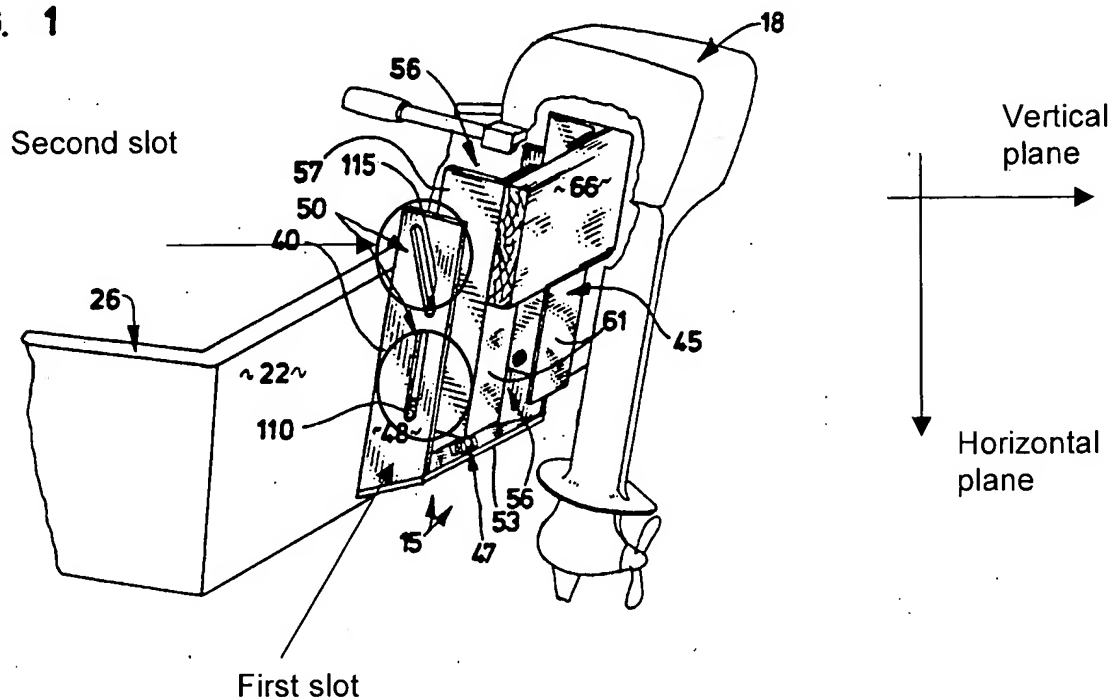
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 1) Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Perkins (US 5100349).

With respect to claim 1, Perkins discloses an apparatus comprising a first slot (Figure 1:50) having a substantially horizontal orientation and a second slot having a substantially vertical orientation. This is disclosed in column 5, lines 1-34.

FIG. 1



A platform (Figure 1:45) having a first end and a second end is movably coupled to the first slot proximal to the first end and movably coupled to the second slot distal to the first end. A drive (Figure 1:47) moves the platform. This is disclosed in column 4, lines 9-67.

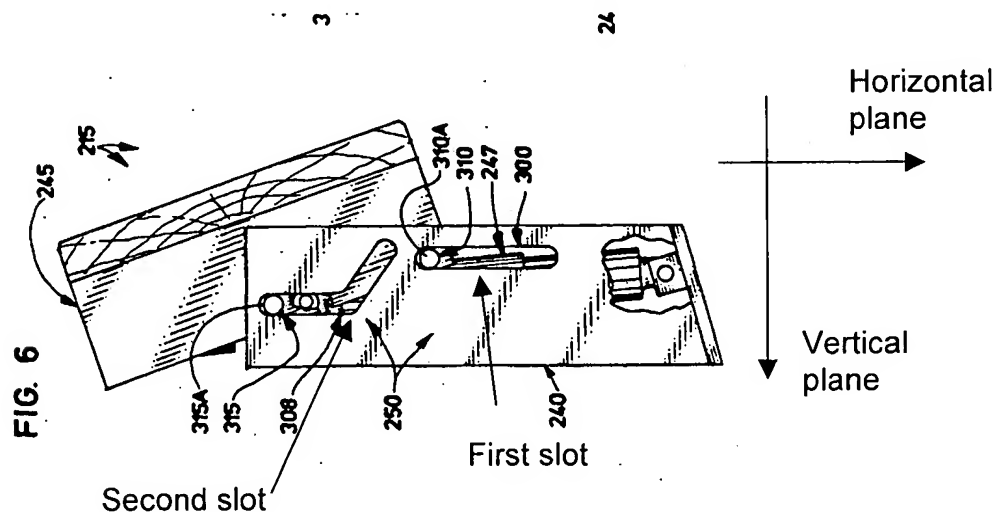
With respect to claim 2, Perkins discloses the apparatus in claim 1 wherein a first member (Figure 1:110) and a second member (Figure 1:115) depend from the platform. The first member depends from the movable platform at a location that is proximal to the first end of the platform, and the second member depends from the movable

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platform at a location that is distal to the first end of the platform. The first member engages the first slot, and the second member engages the second slot.

With respect to claim 3, Perkins discloses the apparatus in claim 1 wherein the drive is a linear drive. Column 4, lines 54-67 and column 5, lines 47-68 disclose the drive as a power cylinder.

With respect to claim 4, Perkins discloses the apparatus in claim 1 wherein the second slot has an arcuate shape. Perkins discloses an additional embodiment in Figures 6-8 and column 6, lines 1-56 in which the second slot has an arcuate shape.



With respect to claim 5, Perkins discloses the apparatus in claim 2 wherein the first member is a roller (Figure 4:110A) and the second member is a roller (Figure 4:115A). This is described in column 5, lines 18-34.

With respect to claim 6, Perkins discloses the apparatus in claim 1 wherein a frame is provided. The frame includes a first and second plates (Figure 3:48) that are spaced apart from one another. A first slot and a second slot are defined in the first

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plate, and a third and fourth slot are defined in the second plate. The first slot and third slot are identical, and the second slot and fourth slot are identical.

With respect to claim 10, Perkins discloses an apparatus comprising a movable platform (Figure 1:45) and a linear drive (Figure 1:47) coupled to the platform and capable of moving the platform in a linear motion. The movable platform is physically engaged to a guide (Figure 1:50) that is configured to convert the linear motion of the drive to rotational motion that causes the platform to move between a horizontal orientation and a vertical orientation. This is described in column 5, lines 35-46.

With respect to claim 12, Perkins discloses the apparatus in claim 10. Although not disclosed, the movable platform is capable of receiving a plurality of flat flasks instead of the disclosed motor. There is no reason to believe that it would be impossible to position flat flasks in a stack on the platform.

With respect to claims 13-15, Perkins discloses the apparatus in claim 10 wherein first and second slots are provided in substantially horizontal and vertical orientations, respectively, within a frame. The second slot has an arcuate shape. This has been described in the rejections above.

With respect to claim 21, Perkins discloses an apparatus comprising a frame having two spaced apart plates (Figure 3:48). As previously described, each plate comprises a substantially horizontally oriented slot (Figure 1:50) and a substantially vertically oriented slot. A platform (Figure 1:45) is movably coupled to the frame at the slots. A drive mechanism (Figure 1:47) is coupled to the platform and is capable of moving the platform.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

- 2) Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins (US 5100349) as applied to claim 6.

With respect to claims 7 and 8, Perkins discloses the apparatus set forth in claim 6 as set forth in the 35 U.S.C. 102 rejection above. Although Perkins does not expressly disclose that the first and fourth slots have deviated portions, it would have been obvious to one of ordinary skill in the art to include deviated portions in the slots disclosed by Perkins. The addition of deviated portions represents an aesthetic change in slot shape that does not cause the apparatus to behave differently. Accordingly, the limitations set forth in claims 7 and 8 are not patentably distinct from the features set forth in the Perkins reference. See MPEP 2144.04.

With respect to claim 9, Perkins discloses the apparatus set forth in claim 6 as set forth in the 35 U.S.C. 102 rejection above. Although Perkins does not expressly disclose that the first plate and second plate are divided into two separate parts, namely a horizontally extending base, and a vertically extending riser, it would have been obvious to separate the plates into subunits if it was determined that this configuration is desirable. By constructing the plates out of a base and riser, one would have had the ability to modify the rotational movement of the platform as it moves along the grooves. Making an object separable does not make the proposed invention patentable over the prior art. See MPEP 2144.04.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gold (US 4770381) and Lenke (US 5269827) references disclose the state of the art regarding movable platforms coupled to a slot.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A. Bowers whose telephone number is (571) 272-8613. The examiner can normally be reached on Monday-Friday 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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